

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re	§	Chapter 11
NPC INTERNATIONAL, INC.,	§	Case No. 20– 33353 (DRJ)
<i>et al.</i> ,	§	(Joint Administration Requested)
Debtors. ¹	§	(Emergency Hearing Requested)

**EMERGENCY MOTION OF DEBTORS FOR
ORDER (I) AUTHORIZING DEBTORS TO (A) PAY
PREPETITION WAGES, SALARIES, REIMBURSABLE EXPENSES,
AND OTHER OBLIGATIONS ON ACCOUNT OF COMPENSATION
AND BENEFITS PROGRAMS AND (B) CONTINUE COMPENSATION
AND BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

EMERGENCY RELIEF HAS BEEN REQUESTED.

PLEASE NOTE THAT THROUGH THE ENTRY OF GENERAL ORDER 2020-10 ON MARCH 24, 2020, GENERAL ORDER 2020-11 ON APRIL 27, 2020, GENERAL ORDER 2020-17 ON JUNE 12, 2020, AND GENERAL ORDER 2020-18 ON JUNE 29, 2020 THE COURT INVOKED AND THEN EXTENDED AND MODIFIED THE PROTOCOL FOR EMERGENCY PUBLIC HEALTH OR SAFETY CONDITIONS.

IT IS ANTICIPATED THAT ALL PERSONS WILL APPEAR TELEPHONICALLY AND ALSO MAY APPEAR VIA VIDEO AT THIS HEARING.

A VIDEO/TELEPHONIC HEARING WILL BE CONDUCTED ON THIS MATTER ON JULY 2, 2020 AT 3:00 P.M. (PREVAILING CENTRAL TIME). PARTIES WISHING TO PARTICIPATE TELEPHONICALLY MUST DIAL IN USING THE COURT’S TELECONFERENCE SYSTEM AT 1-832-917-1510 AND ENTERING CONFERENCE CODE 205691. PARTIES WHO ALSO WISH TO PARTICIPATE BY VIDEOCONFERENCE MAY DO SO BY USE OF AN INTERNET CONNECTION, USING THE WEBSITE WWW.JOIN.ME,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are NPC International, Inc. (7298); NPC Restaurant Holdings I LLC (0595); NPC Restaurant Holdings II LLC (0595); NPC Holdings, Inc. (6451); NPC International Holdings, LLC; (8234); NPC Restaurant Holdings, LLC (9045); NPC Operating Company B, Inc. (6498); and NPC Quality Burgers, Inc. (6457). The Debtors’ corporate headquarters and service address is 4200 W. 115th Street Suite 200 Leawood, KS 66211.

SELECTING “JOIN A MEETING,” AND ENTERING MEETING CODE “JudgeJones.”

IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

RELIEF IS REQUESTED NOT LATER THAN JULY 2, 2020.

NPC International, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

Background

1. On the date hereof (the “**Petition Date**”), the Debtors commenced with this Court their voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases. Contemporaneously herewith, the Debtors filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

2. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Eric Koza in Support of the Debtors’ Chapter 11 Petitions and First Day Relief*,

sworn to on the date hereof (the “**Koza Declaration**”),² which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

Jurisdiction

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

4. By this Motion, pursuant to sections 105(a), 363, and 507(a) of the Bankruptcy Code, the Debtors request (i) authority, but not direction, to (a) pay prepetition wages, salaries, reimbursable expenses, and other obligations on account of the Compensation and Benefits Programs (as defined below) in the ordinary course of business as provided herein and (b) continue the Compensation and Benefits Programs, and (ii) related relief. The Debtors request, pursuant to this Motion, authority to pay prepetition obligations related to the Compensation and Benefits Programs upon entry of the Proposed Order (defined below), in an amount not to exceed \$41.5 million as they become due in the ordinary course of business. An estimate of the prepetition obligations related to the Compensation and Benefits Programs is set forth below:

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Koza Declaration.

Compensation and Benefits Program (each as defined herein)	Total Relief Requested
Employee Compensation	\$18,760,000
Supplemental Workforce Compensation	\$60,000
Payroll Processing Fees	\$4,000
Quick Access Wages Program	\$740,000
Withholding Obligations	\$6,070,000
Reimbursable Expenses	\$230,000
Automotive Reimbursement Program	\$100,000
Health Insurance Programs	\$2,734,000
Life Insurance and Disability Programs	\$40,000
401(k) Obligations ³	\$210,000
Non-Insider Employee Incentive Program	\$1,500,000
PTO	\$11,000,000
Non-Insider Severance Practice	\$0
Total	\$41,448,000

5. The Debtors further request that the Court (a) authorize all applicable financial institutions (collectively, the “**Banks**”) to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing to the extent directed by the Debtors in accordance with this Motion and to the extent the Debtors have sufficient funds on deposit in their accounts with such Bank, whether such checks were presented or electronic requests were submitted before or after the date hereof, and (b) authorize all Banks to rely on the Debtors’ designation of any particular check or electronic payment request as appropriate pursuant to this Motion without any duty of further inquiry and without liability for following the Debtors’ instructions.

6. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “**Proposed Order**”).

³ For the avoidance of doubt, the 401(k) Obligations includes Employee 401(k) Contributions, the Debtors’ 401(k) Match, and any administrative and service fees paid in connection with the 401(k) Plans (each as defined and described below).

The Debtors' Workforce

7. As of the Petition Date, the Debtors employ approximately 36,000 individuals in the United States, approximately 7,500 of whom are employed on a full-time basis, and approximately 28,500 of whom are employed on a part-time basis (collectively, the "**Employees**"). Approximately 34,000 Employees are paid on an hourly-basis, and approximately 2,000 Employees are paid a salary. None of the Debtors' Employees are subject to a collective bargaining agreement or any similar labor agreement.

8. The Debtors also utilize the services of independent contractors to provide security guard services from various security providers (the "**Security Providers**") to promote the safety of their franchise locations (such independent contractors, the "**Supplemental Workforce**" and, together with the Employees, the Debtors' "**Workforce**"). The Supplemental Workforce is an important component of the Debtors' enterprise and consists of approximately eighty (80) individuals as of the Petition Date.

9. The Debtors' businesses are labor intensive and hyper-sensitive to fluctuations in the labor market. In particular, the economy has been marked by escalating wage pressures and decreasing number of teens in the workforce—teens historically making up a significant portion of the Debtors' workforce. The Debtors' Employees performs a wide variety of functions that are critical to the Debtors' operations and cannot be replaced easily due to the shrinking labor market of willing individuals. During these times of turbulent shifts in the labor market, failure to maintain the continued, uninterrupted services of their workforce could upend the Debtors' reorganization efforts and jeopardize the value of their businesses as a going concern.

Compensation and Benefits Programs

10. The Debtors maintain various compensation and benefits programs (each as defined herein and collectively, the “**Compensation and Benefits Programs**”), and pay various administrative fees and premiums in connection therewith, including:

- (a) Employee Compensation;
- (b) Supplemental Workforce Compensation;
- (c) Payroll Processing Fees;
- (d) PayActiv Programs;
- (e) Withholding Obligations;
- (f) Reimbursable Expenses;
- (g) Automotive Reimbursement Program;
- (h) Health Insurance Programs;
- (i) Health Savings Account;
- (j) Life Insurance and Disability Programs;
- (k) 401(k) Plan;
- (l) Non-Insider Employee Incentive Programs;
- (m) PTO; and
- (n) Non-Insider Severance Practice.

11. The Debtors believe that the vast majority of their Employees rely primarily on the Compensation and Benefits Programs to pay their daily living expenses and support their families. Employees would face significant financial consequences if the Debtors are not permitted to continue administering the Compensation and Benefits Programs in the ordinary course of business. Furthermore, the Debtors’ failure to honor their obligations in connection with

the Compensation and Benefits Programs could result in attrition at a time when the Debtors are most susceptible to business disruption on account of labor fluctuations.

12. Subject to the Court's approval and on the terms and conditions set forth herein, the Debtors intend to continue administering their Compensation and Benefits Programs in the ordinary course. The Debtors further request confirmation of their right to modify, change, and discontinue any of their Compensation and Benefits Programs and to implement new programs, policies, and benefits for non-insider Employees in the ordinary course of business during these chapter 11 cases, in their discretion and without the need for further Court approval, subject to applicable orders entered in these chapter 11 cases, including any order approving the Debtors' use of cash collateral, any agreements executed in contemplation of these chapter 11 cases, and the requirements of the Bankruptcy Code and Bankruptcy Rules.

13. The Debtors estimate that, as of the Petition Date, they owe approximately \$41.5 million in the aggregate on account of the Compensation and Benefits Programs.

A. Compensation, Payroll Processing Fees, Withholding Obligations, and Reimbursable Expenses

a. *Employee Compensation*

14. The Debtors generally pay Employees' wages and salaries (collectively with the Match Payment (defined below), the "**Employee Compensation**") every two weeks (each two-week period, the "**Pay Period**"). Most Employees are paid one week in arrears, and therefore the Debtors owe most Employees accrued but unpaid Compensation as of the Petition Date. Employee Compensation also may be due for a variety of other reasons, including Employees holding issued but uncashed paychecks as of the Petition Date. In the twelve (12) months before the Petition Date, the Debtors spent an average of approximately \$42.2 million per month on account of Employee Compensation.

15. Additionally, the Debtors historically provided a deferred compensation and retirement plan (the “**DCP**”) for certain of its Employees (the “**DCP Participants**”), under which DCP Participants were able to contribute up to seventy-five (75) percent of their base salary and bonus, with a corresponding match of up to four (4) percent of their base salary by the Debtors (“**DCP Match**”). On October 13, 2019, the Debtors terminated the DCP but replaced the benefit with an increase in the DCP Participants’ Employee Compensation equal to the DCP Match (the “**Match Payment**”).

16. As of the Petition Date, the Debtors estimate that they owe approximately \$18.8 million on account of Employee Compensation earned by Employees before the Petition Date, approximately \$28,000 of which is on account of the Match Payment. The Debtors do not believe that any individual is owed payment on account of Employee Compensation in an aggregate amount exceeding the \$13,650 cap imposed by section 507(a)(4) of the Bankruptcy Code.

b. *Supplemental Workforce Compensation*

17. To compensate the Supplemental Workforce, on a monthly basis, the Debtors pay the Security Providers, which then make payments to the Supplemental Workforce (the “**Supplemental Workforce Compensation**” and, together with Employee Compensation, the “**Compensation**”). It is critical that the Debtors be able to continue honoring their obligations with respect to the Supplemental Workforce Compensation. Failure to timely pay the Supplemental Workforce Compensation could interrupt the Debtors’ operation of their franchise locations and have widespread negative effects throughout the Debtors’ businesses. Staying current with respect to the Supplemental Workforce Compensation will help minimize unnecessary disruption to the Debtors’ business.

18. On average, the Debtors pay approximately \$630,000 in aggregate Supplemental Workforce Compensation each year. As of the Petition Date, the Debtors estimate that they owe approximately \$60,000 in Supplemental Workforce Compensation.

c. Payroll Processing

19. The Debtors utilize Automatic Data Processing, Inc. (“**ADP**”) to facilitate payroll as well as tax and benefits withholding. On average, the Debtors pay ADP administration fees of approximately \$40,000 (the “**Payroll Processing Fees**”) each year. As of the Petition Date, the Debtors estimate that they owe ADP approximately \$4,000 in Payroll Processing Fees.

d. PayActiv

20. Many of the Debtors’ Employees who rely on their Employee Compensation to support their families require access to their Employee Compensation on a faster basis than every two (2) weeks. In order to accommodate the needs of their Employees and prevent undue turnover as a result of Employees seeking employment with faster payment timelines, the Debtors have made available to their Employees an earned wages access program through PayActiv, Inc. (“**PayActiv**,” and such program, the “**Quick Access Wages Program**”). Through the Quick Access Wages Program, participating Employees can receive, in exchange for a flat bi-weekly fee (the “**PayActiv Fee**”), daily wage payments for each completed work-day. Participating Employees have the option of choosing to receive up to fifty percent of their earned wages, payable immediately. Based on the payroll information PayActiv receives from the Debtors for the participating Employees, PayActiv withholds the PayActiv Fee from the payments it makes to the participating Employees. The Debtors, in turn, pay PayActiv whatever earned wages that PayActiv funded for participating Employees for each Pay Period in arrears.

21. The Quick Access Wages Program is essential to the Debtors’ business given the characteristics of the Debtors’ Employee population, and the payments processed

through PayActiv are essentially pass-through employee wages, with PayActiv acting as an intermediary for such wages. As such, amounts owed to PayActiv by the Debtors are a portion of the Employee Compensation as defined above. Approximately 9,750 Employees participate in the Quick Access Wages Program, and on average, PayActiv pays approximately \$1.7 million per month to such Employees on behalf of the Debtors. As of the Petition Date, the Debtors estimate that approximately \$740,000 in arrears is owed to PayActiv as a result of the wages paid pursuant to the Quick Access Wages Program.

e. ***Withholding Obligations***

22. The Debtors are required by law to withhold from Employees' paychecks amounts related to, among other things, federal, state, and local income taxes and social security and Medicare taxes (collectively, the "**Employee Payroll Taxes**") for remittance to applicable federal, state, and local taxing authorities. The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance (together with the Employee Payroll Taxes, the "**Payroll Taxes**").⁴ In the twelve (12) months before the Petition Date, the Debtors remitted, on average, approximately \$10.5 million in Payroll Taxes each month.

23. During applicable pay periods, the Debtors also deduct certain amounts from Employees' paychecks on account of garnishments, levies, child support and related fees, pre-tax contributions related to certain of the Health and Welfare Programs (as defined below), and fees related to identify theft monitoring services available to certain Employees (collectively,

⁴ Contemporaneously herewith, the Debtors have sought authority, but not direction, to pay certain prepetition taxes, assessments, fees, and other charges in the ordinary course of business pursuant to the *Emergency Motion of Debtors for Order (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Assessments, and (II) Granting Related Relief* (the "**Taxes Motion**"). By this Motion, the Debtors do not seek authority to pay prepetition claims that may be covered by the relief sought in the Taxes Motion.

the “**Deductions**”). The Debtors transfer the amounts comprising such Deductions to the appropriate designated third-party recipients. In the twelve (12) months before the Petition Date, the Debtors withheld, on average, approximately \$1.4 million in Deductions each month. The Debtors estimate that, as of the Petition Date, \$410,000 have accrued in Deductions.

24. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but unremitted Payroll Taxes and Deductions (together, the “**Withholding Obligations**”) is approximately \$6.1 million.⁵

f. Reimbursable Expenses

25. In the ordinary course of business, the Debtors reimburse certain Employees for reasonable and customary expenses incurred in the scope of their employment (the “**Reimbursable Expenses**”). Reimbursable Expenses generally include travel-related expenses arising from transportation, lodging, and dining that are incurred in connection with business travel, mileage reimbursements for delivery drivers, and certain allowances for cellphone plans and costs associated with owning or leasing a vehicle. Most Reimbursable Expenses are incurred by Employees using their own funds, and thus the Debtors reimburse such amounts to Employees directly. The Debtors review, audit, and approve all such Reimbursable Expenses before reimbursing an Employee for any Reimbursable Expenses.

26. As of the Petition Date, the Debtors estimate that approximately \$230,000 in Reimbursable Expenses remain outstanding.

⁵ Pursuant to relief available under the Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”), the Debtors intend to defer payment of the employer-paid portion of Social Security taxes beginning with pay date on July 7, 2020. As permitted under the CARES Act, the Debtors intend to remit half of the deferred payments by the end of 2021 and the balance by the end of 2022. As of and through the pay date on July 7, 2020, the Debtors expect that such deferred payments of the employer-paid portion of Social Security taxes will equal approximately \$1.5 million. Subject to further Internal Revenue Service guidance, the Debtors may remit such deferred payments prior to the end of 2021 to the extent necessary or advisable in its discretion.

g. Automotive Reimbursement Program

27. In the ordinary course of business, the Debtors provides a reimbursement program to certain Employees for fuel and other vehicle-related costs incurred using their personal vehicles for business purposes, taking into account the particularities of the regions in which the Employees operate and their specific vehicle usage (the “**Automotive Reimbursement Program**”). The Automotive Reimbursement Program is administered by Motus, LLC (“**Motus**”), which manages and maintains the relevant data, such as city of residence, annual miles traveled for business, applicable driving territory, and driving conditions of the applicable territory.

28. The Automotive Reimbursement Program is generally available to Employees whose roles require frequent travel, *e.g.*, district managers, regional managers, and division vice presidents. If compliant with the program standards, participating Employees receive (i) a cents-per-mile reimbursement for each business mile they report and (ii) a fixed reimbursement each month equal to 75 percent of certain vehicle costs (*e.g.*, insurance, license and registration fees, taxes, depreciation), which amount may vary by Employee and represents costs incurred by such Employee regardless of the number of miles driven. Approximately 315 Employees participate in the Automotive Reimbursement Program, and Employees submit a claim for reimbursement to Motus, which calculates the amount of the reimbursements and submits such calculations to the Debtors on a monthly basis. On average, the Debtors pays Motus approximately \$230,000 each month in connection with the Automotive Reimbursement Program, and Motus, in turn, reimburses participating Employees approximately one week after such payment from the Debtors. In addition, the Debtors pay Motus a fee of approximately \$13,500 per month to administer the Automotive Reimbursement Program.

29. As of the Petition Date, the Debtors estimate that they owe Motus approximately \$100,000 on account of the Automotive Reimbursement Program.

B. Employee Benefits Programs

30. In the ordinary course of business, the Debtors offer eligible Employees various benefits programs, including the Health and Welfare Programs, the Non-Insider Employee Incentive Programs, Paid Leave, and under certain circumstances and at the Debtors' discretion, the Non-Insider Severance Practice (each defined below).

a. Health and Welfare Programs

31. As described in more detail below, the Debtors offer several health and welfare benefits programs to eligible Employees, including the Health Insurance Programs, the HSAs (defined below), the Life Insurance and Disability Programs, and the 401(k) Plan (each as defined and described below and, collectively, the "**Health and Welfare Programs**"). In addition, the Debtors pay certain routine administrative fees to third-party service providers in connection with administering the Health and Welfare Programs.

(i) Health Insurance Programs

32. The Debtors offer the following health insurance programs (each, a "**Health Insurance Program**") to eligible Employees and their families:

Type of Benefits	Benefits Provider
Medical	Blue Cross Blue Shield
Limited Medical / Minimum Essential Coverage	Ternian
Prescription	RxBenefits
Dental	Delta Dental of Kansas
Vision	Surency
Tobacco Cessation	Quit for Life

33. The Health Insurance Programs are self-insured by the Debtors, meaning that the Debtors pay for all approved medical, dental, vision, and other claims (collectively, the "**Health Benefit Claims**") submitted by each Employee to the applicable benefits providers listed above (each a "**Health Benefits Provider**"). The Debtors pay certain administrative fees to

the Health Benefits Providers in connection with the Health Insurance Programs. The total cost of such fees is approximately \$330,000 per month. The Debtors estimate that, as of the Petition Date, they owe approximately \$330,000 in such fees.

34. The Debtors partly subsidize the Health Insurance Programs with Employee-contributions withheld from gross pay. The Debtors are unable to ascertain with certainty the prepetition amounts due and outstanding on account of the Health Benefits Claims because such claims are submitted and processed at varying times. The Debtors also subsidize or continue providing health benefits to certain current and former Employees, including benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”).⁶ The average monthly amount of Health Benefit Claims has been approximately \$1.7 million over the last twelve (12) months. Based on historical trends, the Debtors estimate that, as of the Petition Date, they owe approximately \$1.7 million on account of prepetition Health Benefit Claims.

35. To protect against exposure to large medical claims, the Debtors maintain a stop-loss policy through Missouri Valley Life and Health Insurance Company (“**Missouri Valley Life**”). Under the stop-loss policy, if the Debtors pay more than \$250,000 for a single event, they can in turn seek reimbursement from Missouri Valley Life for the amounts exceeding \$250,000. The Debtors pay a monthly premium of approximately \$110,000 to Missouri Valley Life for the benefit of the stop-loss policy. Through May 2020, three (3) Employees submitted Health Benefit Claims for more than \$250,000, totaling in the aggregate approximately \$900,000. As of the Petition Date, the Debtors owe approximately \$700,000 as a result of system issues at Missouri Valley Life and its related request that the Debtors temporarily hold payments in respect of the stop-loss policy.

⁶ Approximately 20-25 former Employees participated in COBRA during the fiscal year 2019.

(ii) Health Savings Account

36. The Debtors provide eligible Employees with the option to contribute up to \$3,550 per year for individual coverage and \$7,100 for family coverage to a health savings account (collectively, the “**HSAs**”). The HSAs allow for pre-tax payroll deductions to pay for qualified expenses and appropriate child or elder dependent care. Currently, approximately 600 Employees contribute to the HSAs. The Debtors pay certain fees to Webster Bank N.A. (“**Webster Bank**”) for administration of the HSAs. In the last twelve (12) months, the Debtors paid Webster Bank approximately \$40,000 in total administrative fees. As of the Petition Date, the Debtors estimate that they owe approximately \$4,000 in administration fees.

(iii) Life Insurance and Disability Programs

37. The Debtors offer life insurance, long-term and short-term disability insurance, and accidental death and dismemberment insurance coverage (collectively, the “**Life Insurance and Disability Programs**”) to eligible Employees through Voya Financial (“**Voya**”) and Aetna Life Insurance Company (“**Aetna**”). The chart below outlines the various Life Insurance and Disability Programs:

Type of Benefit	Benefits Provider	Funded by Debtors/Employees
Basic Life Insurance	Voya	Paid by Debtors
Basic Accidental Death and Dismemberment	Voya	Paid by Debtors
Basic Short-Term Disability	Voya	Paid by Debtors
Voluntary Term Life	Voya	Voluntary and deducted from Employee Compensation
Voluntary AD&D	Voya	Voluntary and deducted from Employee Compensation
Voluntary Short-Term Disability	Voya	Voluntary and deducted from Employee Compensation
Long-Term Disability	Aetna	Voluntary and deducted from Employee Compensation
Voluntary Long-Term Disability	Aetna	Voluntary and deducted from Employee Compensation
Accident Insurance	Voya	Voluntary and deducted from Employee Compensation
Critical Illness	Voya	Voluntary and deducted from Employee Compensation

38. The total cost of the Life Insurance and Disability Programs is approximately \$125,000 each month, of which approximately \$40,000 is paid by the Debtors, with the remainder paid by Employees through withholding, as described above. As of the Petition Date, the Debtors estimate that they owe \$40,000 on account of the Life Insurance and Disability Programs.

(iv) Retirement Plans

39. The Debtors offer eligible Employees the opportunity to participate in a 401(k) plan (the “**401(k) Plan**”). Employees who participate in the 401(k) Plan can make pre-tax payroll contributions to their 401(k) accounts up to the maximum amount permitted by the Internal Revenue Code. Each participating Employee’s 401(k) contributions are deducted automatically from their paychecks (the “**401(k) Contributions**”). The Debtors match fifty (50) percent of an eligible Employee’s 401(k) Contributions up to four (4) percent of the Employee’s base income (the “**401(k) Match**,” and together with the 401(k) Contributions and any administrative and service fees, the “**401(k) Obligations**”). Generally, the 401(k) Match is made by the Debtors during each Payroll Period. On an average annual basis, the Debtors (a) remit approximately \$3.4 million for Employees on account of 401(k) Contributions and (b) spend approximately \$1.8 million on account of 401(k) Matches. As of the Petition Date, the Debtors estimate that they have accrued approximately \$140,000 of 401(k) Contributions on behalf of Employees and approximately \$70,000 of 401(k) Matches. The Debtors do not believe that prepetition 401(k) Matches for any Employee would exceed the limits imposed by section 507(a)(5) of the Bankruptcy Code.

40. The 401(k) Plan is administered by Orchard Trust Company. As of the Petition Date, the Debtors do not believe that they owe any amounts on account of administrative fees in connection with the 401(k) Plan.

(v) Terminated Deferred Compensation and Retirement Programs

41. In addition to the terminated DCP, the Debtors historically offered another non-qualified deferred compensation plan (the “**POWR Plan**,” and together with the DCP, the “**Deferred Comp Plans**”), which was terminated contemporaneously with the DCP on October 13, 2019. There are approximately 76 participants in the DCP and approximately 200 participants in the POWR Plan. Under the DCP, eligible Employees could defer compensation, which the Debtors would match up to certain limits, and the Debtors would then hold such funds in trust. The POWR Plan, on the other hand, was a performance-based profit-sharing plan with employer contributions. The Deferred Comp Plans are fully funded in an amount of approximately \$12 million, and, in accordance with applicable tax law, payments to all plan participants on account of the terminated Deferred Comp Plans are currently scheduled to be made on October 2020. The Debtors are not seeking authority in this Motion to make any payments on account of the Deferred Comp Plans.⁷

b. *Non-Insider Employee Incentive Programs*

42. The Debtors have maintained, in the ordinary course of business, certain incentive programs to motivate and reward certain of their rank and file, non-insider Employees, preserve Employee morale, and incentivize the Employees to hit specific performance metrics (collectively, the “**Non-Insider Employee Incentive Programs**”).⁸ The Non-Insider Employee Incentive Programs include performance-based incentive programs, such as a monthly incentive

⁷ NPC RH I has guaranteed the obligations under the Deferred Comp Plans.

⁸ The relief sought in this Motion with respect to the Non-Insider Employee Incentive Programs does not include the payment of any obligation to an “insider” (as that term is defined in section 101(31) of the Bankruptcy Code, an “**Insider**”). The Debtors reserve all rights with respect to the classification of individuals as “Insiders” and “non-Insiders.”

program for certain field Employees (the “**Monthly Field Incentive Program**”), and an annual bonus program for certain corporate-level Employees (the “**ABP**”). Awards under the Non-Insider Employee Incentive Programs are calculated based on specific performance metrics and timelines established pursuant to the applicable program and distributed at the discretion of the Company. As stated above, none of the participants of the Non-Insider Employee Incentive Programs are Insiders—they are rank and file Employees that report directly or indirectly to an executive and do not make or participate in making any corporate-level decisions and policies.

43. The Debtors believe the Non-Insider Employee Incentive Programs are integral to the Debtors’ business operations because they align the interests of eligible Employee with those of the Debtors by linking payments under the Non-Insider Employee Incentive Programs to the overall performance and efficiency of the Debtors’ operations. Further, the Debtors believe that most store-level Employees who are eligible for awards under the Non-Insider Employee Incentive Programs view such awards as an integral part of their overall compensation and rely on such awards to pay their living expenses and support their families. The Debtors estimate that, as of the Petition Date, they owe approximately \$1.0 million on account of the Non-Insider Employee Incentive Program.

(i) Monthly Field Incentive Program

44. Restaurant general managers (“**RGMs**”), assistant managers (“**Assistant Managers**”), area general managers (“**AGMs**”), and regional managers (“**Regional Managers**,” and together with the RGMs, Assistant Managers, and AGMs, the “**Field Managers**”) are eligible to participate in the Monthly Field Incentive Program. To be eligible to receive payment under the Monthly Field Incentive Program, an eligible Field Manager must be employed by the Debtors at the requisite site for the requisite period on the program payout date. Awards under the Monthly

Field Incentive Program are paid prior to the end of the monthly fiscal period following the period for which the award is calculated.

45. Awards under the Monthly Field Incentive Program are based on the actual sales, profit, and success of the store(s) for which an eligible Employee is responsible, and awards to individual eligible Employees range between approximately \$76 and \$2,640 a month. The potential awards for AGMs are calculated as a percentage of the combined RGMs' bonus in their assigned area, and the potential awards for the Regional Managers are calculated as a percentage of the combined AGMs' bonus in their assigned region.

46. The Debtors estimate that the average monthly payout is approximately \$1.5 million in the aggregate under the Monthly Field Incentive Program. As of the Petition Date, the Debtors estimate that they owe approximately \$1.5 million on account of the Monthly Field Incentive Program.

(ii) Annual Bonus Plan

47. Certain of the Debtors' non-Insider,⁹ full-time corporate-level Employees are eligible to participate in the ABP. To be eligible to receive payment under the ABP, an Employee must be employed by the Debtors on the program payout date and satisfy certain performance metrics, as discussed below. Awards under the ABP are generally paid on an annual basis, at the end of the first quarter upon the completed calculation of two or more of the following performance metrics: (i) the Company or one of the Pizza Hut or Wendy's brands under which the eligible Employee works realizing a certain level of earnings before interest, taxes, depreciation, and amortization; (ii) the department or division in which the eligible Employee

⁹ Certain officers of the Debtors are eligible for awards under the ABP. For the avoidance of doubt, to the extent such Employee is an Insider, the Debtors do not seek authority in this Motion to honor obligations arising under the ABP with respect to any such officer-Employee.

works realizing certain performance goals; and/or (iii) an Employee exceeding a personal metric. Upon the satisfaction of the applicable performance metrics, eligible Employees may be entitled to an award under the ABP. Payments under the ABP are typically made at the end of March each year, and for the year 2019, the Debtors made payments under the ABP totaling approximately \$900,000. As of the Petition Date, the Debtors estimate that they do not owe any amounts on account of the ABP to non-Insider Employees.

c. *Employee Leave Benefits*

48. The Debtors provide Employees with various forms of paid leave (“**Paid Leave**”). Employees generally accrue vested paid time off (“**PTO**”) based on their hours worked for Employees paid by the hour or length of service for full-time Employees, and location of service. Part-time Employees are eligible for PTO if they work an average of thirty (30) hours per week for over six (6) months. Accrued PTO vests in January and July of each year, and the Debtors “cash out” accrued PTO in accordance with applicable non-bankruptcy law when an Employee is terminated. As of the Petition Date, the Debtors estimate that their Employees have accrued approximately \$11.0 million in the aggregate of unused PTO. Approximately twelve (12) Employees are owed an aggregate of approximately \$120,000 in excess of the statutory cap imposed by section 507(a)(4) of the Bankruptcy Code. All accrued amounts, however, are not current cash payment obligations. By this Motion, the Debtors seek authority, but not direction, to pay as they come due any “cash out” amounts with respect to earned but unused PTO only when required by applicable non-bankruptcy law, and to continue to administer the Paid Leave policy in the ordinary course of business.

49. In addition to PTO, other forms of Paid Leave include:
- (a) personal leave for personal sick leave, vacation, or other time off;
 - (b) certain scheduled or calendared holidays throughout the year;
 - (c) Paid Leave under the Family and Medical Leave Act; and
 - (d) other Paid Leave for personal reasons, many of which are required by law, including statutory sick leave, workers' compensation leave, missed work time in the ordinary course of business for bereavement leave, jury or court attendance, and time spent voting.

These other forms of Paid Leave do not involve incremental cash outlays beyond standard payroll obligations.

50. The Debtors believe that continuing the Paid Leave policies in accordance with prior practice is essential to maintaining positive Employee morale during these chapter 11 cases. Furthermore, the policies are generally broad-based programs upon which all eligible Employees have come to depend. The Debtors anticipate that their Employees will continue to utilize their accrued PTO in the ordinary course of business, which will not create any material cash payment requirements beyond the Debtors' regular payroll obligations.

d. *Non-Insider Severance Practice*

51. The Debtors, in the ordinary course of business, provide severance for certain Employees on a discretionary basis pursuant to certain informal guidelines (the "**Non-Insider Severance Practice**").¹⁰ For single terminations of Employees with a Regional Manager or more senior title, the Debtors generally offer severance payments of between three to six months' worth of Compensation as a lump sum, based on the length of employment, specific circumstances surrounding the termination of employment, and seniority (the "**Individual**

¹⁰ Historically, the Debtors' severance practice was not limited to non-Insiders. However, for the avoidance of doubt, the Debtors do not seek authority in this Motion to continue its severance practice with respect to any Insiders.

Severance Benefits”). In the case of multiple simultaneous Employee terminations, which is more rare, the Debtors generally offer severance payments of one to two weeks’ worth of Compensation as a lump sum, based on position and seniority (the “**Multi-Severance Benefits**” and together with the Individual Severance Benefits, the “**Severance Benefits**”). Each discretionary offer of Severance Benefits is approved by the applicable brand chief executive officer and the applicable brand chief people officer or vice president of the business unit in which the Employee works. All Employees as a prerequisite to receiving Severance Benefits are required to sign a comprehensive release and waiver of all potential claims against the Company in exchange for such benefits.

52. The Debtors’ ability and flexibility to provide severance amounts and other benefits, at its discretion, is critical to maintaining positive Employee morale and loyalty. Failure to continue the Non-Insider Severance Practice could cause premature Employee turnover, which could undermine the Debtors’ ongoing restructuring.

53. In the last twelve (12) months, the Debtors have spent approximately \$170,000 on account of the Non-Insider Severance Practice. As of the Petition Date, the Debtors do not believe that they owe any amounts on account of the Non-Insider Severance Practice. For the avoidance of doubt, the Debtors do not seek authority to pay any Severance Benefits to Insider Employees, but reserve all rights to seek authority pursuant to a separate motion to make such payments at a later time, as they may determine to be necessary.

Relief Requested Should Be Granted

A. Payment of Obligations on Account of Compensation and Benefits Programs Is Warranted under Sections 363(b)(1) and 105(a) of the Bankruptcy Code

54. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code, which provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the

estate[.]” 11 U.S.C. § 363(b)(1). Courts in the Fifth Circuit have granted a debtor’s request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business reasons. *See, e.g., Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App’x 429, 435 (5th Cir. 2016); *In re Cont’l Air Lines*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or [a] debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”) (citation omitted); *see also In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale[.]”); *In re Terrace Gardens Park P’ship*, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989).

55. In addition, under section 1107(a) of the Bankruptcy Code, a debtor has, among other things, the “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)). Under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); *see also In re CoServ*, 273 B.R. at 497 (holding that sections 105 and 1107 of the Bankruptcy Code provide authority for a debtor-in-possession to pay prepetition claims); *In re Tusa-Expo Holdings, Inc.*, Case No. 08-45057-DML-11, 2008 WL 4857954, at *1 (Bankr. N.D. Tex. Nov. 7, 2008); *In re CEI Roofing*, 315 B.R. at 56; *In re Mirant Corp.*, 296 B.R. 427 (Bankr. N.D. Tex. 2003). Moreover, Bankruptcy Rule 6003 itself implies that the payment of prepetition

obligations may be permissible within the first 21 days of a case where doing so is “necessary to avoid immediate and irreparable harm.” Accordingly, the Bankruptcy Code authorizes the postpetition payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of a debtor’s estate.

56. The relief requested by this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is justified under sections 363(b) and 105(a) of the Bankruptcy Code. Indeed, without the relief requested herein, the Debtors’ Workforce may seek alternative employment opportunities with the Debtors’ many competitors. The loss of valuable Employees would deplete the Debtors’ Workforce, thereby jeopardizing the Debtors’ ability to generate revenue and destabilizing the Debtors’ operations.

57. Additionally, failure to satisfy the prepetition obligations in connection with the Compensation and Benefits Programs may negatively impact Employee morale and loyalty at a time of already perceived uncertainty in light of the commencement of these chapter 11 cases. The Debtors believe that the majority of their Employees rely primarily on the Compensation and Benefits Programs to meet their daily living needs. Further, the Debtors believe a vast majority of the Employees may seek and find alternative employment, and such a development would deplete the Debtors’ Workforce, hinder the Debtors’ ability to service the needs of their customers, and potentially diminish creditor and counterparty confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts and attendant training costs that would be required to replace such Employees would be a substantial and costly distraction at a time when the Debtors are highly sensitive and cannot afford disruptions in their operations and Employee base. Without

the relief requested herein, Employees could be exposed to significant financial and health hardships.

58. Specifically, the Quick Access Wages Program was recently introduced by the Debtors to address downward labor pressures—including increased labor costs, the shrinking labor market and the turbulent shifts in the QSR industry caused by the national health crisis relating to COVID-19. The Quick Access Wages Program allows the Debtors' Employees ready access to paychecks and tips without undue financial stress. Approximately twenty-seven (27) percent of the Employees participates in the Quick Access Wages Program, and without the relief requested with respect to prepetition amounts owed to PayActiv, PayActiv will likely stop the Quick Access Wages Program and disrupt the key driver of the Debtors' businesses—the Employees. Given that the outstanding prepetition amounts owed to PayActiv are essentially pass-through wages of the Employees, payment of such amounts are equivalent to the payment of prepetition wages, relief that is consistently granted by the bankruptcy courts in all districts.

59. Moreover, the Debtors believe that it is important to obtain approval to satisfy any postpetition obligations under the Non-Insider Employee Incentive Program and the Non-Insider Severance Practice to reassure their Employees that the Debtors will honor such obligations to Employees during these chapter 11 cases. The Debtors have substantial business justification for continuing the Non-Insider Employee Incentive Program and Non-Insider Severance Practice in the ordinary course of business, including the need to maintain Employee morale and reassure Employees that the Debtors intend to honor their obligations to Employees—both during and after their tenure with the Debtors. Further, certain store-level Employees who are eligible for awards under the Non-Insider Employee Incentive Programs, such as store

managers, view such awards as an integral part of their overall compensation and rely on such awards to pay their living expenses and support their families.

60. Further, certain of the obligations under the Compensation and Benefits Programs are entitled to priority treatment under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. Under section 507(a)(4)(A) of the Bankruptcy Code, claims of employees against a debtor for “wages, salaries, or commissions, including vacation, severance, and sick leave pay,” that are “earned within 180 days before” the petition date are afforded priority, unsecured status up to \$13,650 per individual. 11 U.S.C. § 507(a)(4)(A). Similarly, under section 507(a)(5) of the Bankruptcy Code, employees’ claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of \$13,650 per employee covered by such plans, less any amount paid pursuant to section 507(a)(4) of the Bankruptcy Code. *Id.* § 507(a)(5). Accordingly, making the payments covered by these sections of the Bankruptcy Code will alter only the timing of their receiving payment, and not in fact result in claims being satisfied that would not have otherwise received payment.

61. Finally, payment of the Payroll Processing Fees and the other administrative fees in connection with the Compensation and Benefits Programs also is necessary. Without the continued services of these third-party service providers, the Debtors will be unable to continue honoring their obligations to Employees in an efficient and cost-effective manner.

B. Payment of Certain Obligations in Connection with the Compensation and Benefits Programs Is Required by Law

62. The Debtors seek authority to remit the Withholding Obligations to the appropriate third parties. These amounts principally represent Employee earnings that governments, judicial authorities, and Employees themselves have designated for deduction from their paychecks. Indeed, certain Deductions, including contributions to the Health and Welfare

Programs and child support and alimony payments, are not property of the Debtors' estates because they have been withheld from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b) ("Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.").

63. Furthermore, federal and state laws require the Debtors and their officers to make certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that a state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (holding that funds held in trust for federal excise and withholding taxes are not property of a debtor's estate); *DuCharmes & Co., Inc. v. Michigan (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Deductions and Payroll Taxes are not property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Withholding Obligations to the proper parties in the ordinary course of business.

**Applicable Financial Institutions Should Be Authorized to
Receive, Process, Honor, and Pay Checks Issued and Transfers
Requested to Pay Obligations Related to the Compensation and Benefits Program**

64. The Debtors further request that the Court authorize the Banks to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to the Compensation and Benefits Program, to the extent that sufficient funds are on deposit and standing in the Debtors' credit in the applicable

bank accounts to cover such payment. The Debtors also seek authority to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or fund transfer requests on account of the Compensation and Benefits Programs dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

Bankruptcy Rule 6003(b) Has Been Satisfied

65. Pursuant to Rule 9013-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of Texas (the "**Local Rules**"), the Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003, which provides that the Court may grant relief within the first 21 days after the Petition Date to the extent such relief is necessary to avoid immediate and irreparable harm. As described herein and in the Koza Declaration, the relief requested is essential to avoid the immediate and irreparable harm that would be caused by the Debtors' inability to transition smoothly into chapter 11. Accordingly, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

**Compliance with Bankruptcy Rule 6004(a)
and Waiver of Bankruptcy Rule 6004(h)**

66. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion satisfies Bankruptcy Rule 6004(a) and that the Court waive the 14-day period under Bankruptcy Rule 6004(h).

Reservation of Rights

67. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims

or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Notice

68. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Southern District of Texas; (ii) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (iii) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019 (Attn: Austin Witt), counsel to the Prepetition Priority/1L Agents; (iv) Pryor Cashman LLP, 7 Times Square, New York, NY 10036 (Attn: Seth Lieberman), counsel to the Prepetition 2L Agent; (v) Moses & Singer LLP, 405 Lexington Avenue, New York, NY 10174 (Attn: Andrew Oliver), counsel to the Prepetition Collateral Agents; (vi) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 (Attn: Scott J. Greenberg and Michael J. Cohen), and Jackson Walker L.L.P., 1401 McKinney, Suite 1900, Houston, TX 77010 (Attn: Bruce J. Ruzinsky), counsel to the Ad Hoc Priority/1L Group; (vii) Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Matthew Brod), counsel to the Second Lien Ad Hoc Group; (viii) McDermott Will & Emery LLP, 2501 North Harwood Street Suite 1900, Dallas, TX 75201-1664 (Attn: Charles R. Gibbs), counsel to the Pizza Hut Franchisor; (ix) Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006 (Attn: Sean A. O'Neal), counsel to the Wendy's Franchisor, (x) the Internal Revenue Service; (xi) the United States Attorney's Office for the Southern District of Texas;

(xii) the Banks; (xiii) any party that has requested notice pursuant to Bankruptcy Rule 2002; and
(xiv) any other party entitled to notice pursuant to Local Rule 9013-1(d).

No Previous Request

69. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 1, 2020
Houston, Texas

/s/ Alfredo R. Pérez
WEIL, GOTSHAL & MANGES LLP
Alfredo R. Pérez (15776275)
700 Louisiana Street, Suite 1700
Houston, Texas 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511
Email: Alfredo.Perez@weil.com

-and-

WEIL, GOTSHAL & MANGES LLP
Ray C. Schrock, P.C. (*pro hac vice* pending)
Kevin Bostel (*pro hac vice* pending)
Natasha Hwangpo (*pro hac vice* pending)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Email: Ray.Schrock@weil.com
Kevin.Bostel@weil.com
Natasha.Hwangpo@weil.com

Proposed Attorneys for Debtors

Certificate of Service

I hereby certify that on July 1, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' proposed claims, noticing, and solicitation agent.

/s/ Alfredo R. Pérez
Alfredo R. Pérez

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re	§	
	§	Chapter 11
	§	
NPC INTERNATIONAL, INC.,	§	Case No. 20–33353 (DRJ)
<i>et al.,</i>	§	
	§	(Joint Administration Requested)
Debtors.¹	§	Re: Docket No. _____

**ORDER (I) AUTHORIZING DEBTORS TO (A) PAY
PREPETITION WAGES, SALARIES, REIMBURSABLE EXPENSES,
AND OTHER OBLIGATIONS ON ACCOUNT OF COMPENSATION
AND BENEFITS PROGRAMS AND (B) CONTINUE COMPENSATION
AND BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the motion, dated July 1, 2020 (the “**Motion**”)² of NPC International, Inc. and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), for entry of orders (i) authorizing the Debtors to (a) pay prepetition wages, salaries, reimbursable expenses, and other obligations on account of the Compensation and Benefits Programs in the ordinary course of business as provided in the Motion and (b) continue the Compensation and Benefits Programs and (iii) granting related relief, all as more fully set forth in the Motion; and upon consideration of the Koza Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §1334; and consideration of the Motion and the requested relief being a core proceeding pursuant

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are NPC International, Inc. (7298); NPC Restaurant Holdings I LLC (0595); NPC Restaurant Holdings II LLC (0595); NPC Holdings, Inc. (6451); NPC International Holdings, LLC; (8234); NPC Restaurant Holdings, LLC (9045); NPC Operating Company B, Inc. (6498); and NPC Quality Burgers, Inc. (6457). The Debtors’ corporate headquarters and service address is 4200 W. 115th Street Suite 200 Leawood, KS 66211.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and upon the record of the hearing; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Debtors are authorized, but not directed, (i) to pay and honor all prepetition obligations, including processing and administrative fees, on account of the Compensation and Benefits Programs in amounts not to exceed \$41.5 million in the aggregate absent further order of this Court; and (ii) continue to administer the Compensation and Benefits Programs in the ordinary course of business, and to modify, change, and discontinue any of their Compensation and Benefits Programs and to implement new programs, policies, and benefits for non-insider Employees in the ordinary course of business during these chapter 11 cases, in their discretion and without the need for further Court approval, subject to the applicable orders entered in these chapter 11 cases, any agreements executed in contemplation of these chapter 11 cases, and the requirements of the Bankruptcy Code, and the Bankruptcy Rules, *provided*, however that the

Debtors shall provide five (5) business days' prior notice to counsel to the Ad Hoc Priority/1L Group before entering into any new Compensation and Benefits Programs.

2. No payments for prepetition obligations on account of Compensation and PTO shall exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

3. The Debtors shall maintain a matrix/schedule of amounts paid pursuant to the Non-Insider Employee Incentive Program and the Non-Insider Severance Practice, subject to the terms and conditions of this Order, including the following information: (i) the title of the Employee paid; (ii) the amount of the payment to such Employee; (iii) the total amount paid to the Employee to date; (iv) the payment date; and (v) the purpose of such payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, counsel to the Ad Hoc Priority/1L Group, and any statutory committee appointed in these chapter 11 cases as requested.

4. Notwithstanding any other provision in this Order, the Debtors are authorized to continue the Non-Insider Employee Incentive Program and the Non-Insider Severance Practice in the ordinary course, but nothing in this Order authorizes the Debtors to make any payments to "insiders" of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code; provided that nothing in this Order shall prejudice the Debtors' ability to seek approval of such relief in accordance with the Bankruptcy Code at a later time.

5. The Debtors and any applicable third parties are authorized to continue to allocate and distribute Deductions and Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' stated policies and prepetition practices.

6. The Banks are authorized to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the

Debtors relating to such obligations, to the extent that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments. The Banks are authorized to accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

7. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Order.

8. Notwithstanding anything to the contrary contained herein, any payment made or authorized to be made under this Order or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any order of this Court approving any use of cash collateral by the Debtors (the "**Cash Collateral Order**"), the documentation in respect of any use of cash collateral, and any budget in connection therewith. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

9. Nothing contained in the Motion or this Order or any payment made pursuant to the authority granted by this Order is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver

of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code.

10. Notwithstanding entry of this Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

11. The Requirements of Bankruptcy Rule 6003(b) have been satisfied.

12. Notice of the Motion is adequate under Bankruptcy Rule 6004(a).

13. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

14. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

15. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2020
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE